IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Con.Case(C).No. 1513 of 2006(S)

ARISING OUT OF THE JUDGEMENT IN WPC.21705/2004 Dated 20/01/2005

.....

PETITIONER/PETITIONER

N.RAVINDRA KURUP, S/O.NEELAKANTA KURUP, AGED 59, `UTHRADAM', VENKAVILA, PAZHAKUTTY P.O., NEDUMANGAD, TRIVANDRUM DISTRICT, RETIRED SECRETARY, PALODE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. T.862, PALODE, TRIVANDRUM.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS/RESPONDENTS 2 & 3:
---

1. V.G.DIVAKARAN, S/O.NOT KNOWN TO THE PETITIONER, AGED NOT KNOWN TO THE PETITIONER, REGIONAL PROVIDENT FUND COMMISSIONER, REGIONAL PROVIDENT FUND OFFICE, BHAVISHYANIDHI BHAVAN, PATTOM PALACE P.O., TRIVANDRUM.

2. O.V.NISHA, DAUGHTER OF NOT KNOWN TO THE PETITIONER, AGED NOT KNOWN TO THE PETITIONER , ASST. PROVIDENT FUND COMMISSIONER (PENSION), REGIONAL PROVIDENT FUND OFFICE, BHAVISHIANIDHI BHAVAN, PATTOM PALACE P.O., TRIVANDRUM.

BY ADV. SRI.N.N. SUGUNAPALAN, SC, P.F.
SMT.T.N.GIRIJA, SC,EPF ORGANISATION
BY SR.GOVERNMENT PLEADER SMT.MEERA

THIS CONTEMPT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

Cont.Case (C)No.1513 of 2006

Dated, this the 25th day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

The petitioner in W.P.(C) No.21705 of 2004 is the complainant in this contempt petition filed under Sections 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India.

(2) In the contempt petition the petitioner asserts that respondents 2 and 3 in the writ petition have disobeyed the orders and directions issued by this Court while disposing of the writ petition on 20th January, 2005.

(3) To appreciate the assertions and allegations made by the petitioner, it would be useful to refer to the orders and directions issued by this Court while disposing of the writ petition. Therefore, they are extracted. They read as under:

> "There will be a direction to the 5th respondent to make an application to the State Government within a month from today, seeking exemption from the Employees Provident Fund Scheme under the E.P.F. And M.P.Act, 1952 with a view to be a member under the Kerala State Cooperative Employees Pension Board. The State Government shall consider the application with notice to the petitioner and respondents 3 and 5 and pass appropriate orders within three months from the date of receipt of the representation. In case the State Government thus exempts the 5th respondent from the purview of the E.P.F. & M.P. Act, the amounts outstanding to the credit of the petitioner and other employees of 5th respondent will be transferred to the first respondent within another one month."

(4) A reading of the aforesaid order would indicate that the 5th respondent in the writ petition, namely the Palode Co-operative Agricultural and Rural Development Bank would make an appropriate application before the State Government within a month from the date of the order seeking exemption from the Employees Provident Fund Scheme under the E.P.F. and M.P.Act, 1952 with a view to be a member under the Kerala State Co-operative Employees Pension Board. The Court has further stated that after receipt of such an application from the 5th respondent, the State Government shall consider that application after notice to the petitioner and respondents 3 and 5 in the writ petition, namely the Assistant Provident Fund Commissioner and the Palode Co-operative Agricultural and Rural Development Bank. The Court has further stated that in case the State Government exempts the 5th respondent, namely the Bank, from the purview of the E.P.F. and M.P.Act , the amounts outstanding to the credit of the petitioner and other employees of the 5th respondent will be transferred to the first respondent, namely the Kerala State Co-operative Employees' Pension Board, Thiruvananthapuram within another one month.

(5) According to the petitioner, the respondents in the contempt petition have disobeyed the orders and directions issued by this Court. Therefore, there is civil contempt.

(6) Section 2(b) of the Contempt of Courts Act, 1971 speaks of 'civil contempt'. Section 2(b) is as under:

> (b) "'civil contempt' means wilful disobedience to any judgment , decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court."

(7) In order to attract the definition of 'civil contempt', first and foremost there must be a judgment, decree or direction and wilful disobedience of the same by the contemnors.

(8) In the instant case, after going through the orders passed by the learned Single Judge, very carefully, we are of the opinion that there was no positive direction issued to the contemnors in the contempt petition. In the absence of such a direction by this Court, it cannot be said that the contemnors have wilfully and deliberately disobeyed the orders and directions issued by this Court. In that view of the matter, cognizance of this complaint cannot be taken by us. Accordingly the contempt proceedings require to be dropped and they are dropped.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns